

PUBLIC POLITICS FOR THE PROTECTION OF THE RIGHTS OF NATURE IN ECUADOR

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Abstract

The Constitution of Ecuador from the preamble proclaims a new form of coexistence, celebrates nature, the Pacha Mama, where life is reproduced and carried out and recognizes it as a subject with its own rights, that its existence and maintenance and regeneration be fully respected. of its life cycles, structure, functions and evolutionary processes, which constitutes a precedent of transcendental importance in the legal field by becoming the first Constitution in the world to recognize these rights. The objective of this work was to analyze the institutionalization of the rights of nature in Ecuador, based on management principles generated through public policies necessary for their protection. The method used was historical, through which relevant aspects were identified around the control and fulfillment of the rights of nature and their consequent institutionalization, through the articulation of organizations that work on this issue.

Keywords: Rights of Nature; Public politics; Institutionalization.

INTRODUCTION

The rights of nature is not an original Ecuadorian idea, but the acceptance of reflections made for decades, when talking about deep ecology, which inspired an ethical-legal approach of man with nature; however, its inclusion in the Constitution of Ecuador was a momentous decision; But it is understood that it was implicit to generate management proposals that allow articulating its compliance.

Conceiving Nature as a subject of rights breaks the traditional paradigms built from Western visions. Traditional has been to conceive of a right as an exclusive attribute of people, above all, of individuals. Therefore, the step taken in Montecristi, for many could be strange, for others, inapplicable and for others, and even risky; However, major changes require efforts that can overcome the barriers of traditional conceptual and ideological limitations.

Eduardo Galeano, when the Constituent Assembly was taking place in Montecristi, in 2008, wrote: "For thousands of years, almost all people had the right not to have rights. [...] What about nature? In a way, one could say, human rights encompass nature, because it is not a postcard to be looked at from the outside; but nature knows well that even the best human laws treat it as an object of property, and never as a subject of law..." These words were accepted in a text in the publication of scientific research of continuous updating Horizons and Divergences; and, developed in the theme: Rights of nature and ecological justice in Latin American key; to introduce the field of studies on the recognition of nature as a subject of law and on justice thought in ecological terms. It was a critical moment, since in Ecuador perspectives and demands of social movements, academia, on the indigenous worldview, environmentalism, which promoted from various strategies, a recognition of this type. (Galeano, 2017)



For Eduardo Gudynas, the new Constitution of Ecuador offered many novelties and innovations, and among them, a clear ecological "mandate". The constitutional text that emerged from the constituent debates in Montecristi made clear obligations referring, among other things, rights to a healthy environment, rights of Nature, conservation of biodiversity, environmental impact assessment, territorial planning, etc., and in this broad set the striking innovation of recognizing the rights of Nature stands out. (Gudynas, 2013)

The environmental problem has undoubtedly meant a process of transformation of knowledge and consciousness, contributing to build not only a new economy, but a new right; That is, the ecological issue has been generating a new ethics and political culture, to legitimize not only the cultural rights, but also the environmental rights of the peoples. (Morales, M., & otros, 2013)

The jurist Bartolomé Clavero, in his Discourse Human Rights and Rights of Mother Earth, pointed out that the inclusion of the rights of nature is closely related to the recognition of indigenous traditions on the relationship with nature; and from legal pluralism and with a multicultural perspective, he warned that the recognition of the rights of peoples and nature as subjects is part of the overcoming of the colonial matrix that led to what he called a depredation of the natural world, and that the indication of the decolonization process is precisely the inclusion in legal language. of those expressions typical of the natives, such as *sumak kawsay*; affirming at the same time that, the rights of Mother Earth can be that key piece and the missing reason for the definitive foundation of truly human rights. (Clavero, 2017)

In a way, you could say that human rights encompass nature, because it is not a postcard to be looked at from the outside; but even the best human laws treat it as an object of property, and never as a subject of rights; it may even be exterminated, without its complaints being heard and without legal norms preventing the impunity of its criminals; Laws do not prevent or stop attacks on land, water or air.

The Inter-American Court of Human Rights in Advisory Opinion 23 17 of November 15, 2017, regarding the protection of the environment, recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, insofar as environmental degradation affects the effective enjoyment of human rights. (CorteIDH, 2017)

As mentioned Eugenio Raúl Zaffaroni in his work *La Pachamama y el humano*, the theme of the alleged exclusivity of the human as a holder of rights always attracted attention. The human as absolute lord of non-human nature and that his progressive and rational mission is to dominate it; It also mentions that moral responsibility starts from the verification of the vulnerability of nature, which can make the species disappear; and that, hence the human imperative to protect nature, which increases to the extent that we are aware of the ease with which we can destroy it, that is, of the experience of vulnerability. (Zaffaroni, 2011)

The rights of nature are projected from a main ecological nucleus, in which two vertices are enunciated: one, relative to the environment, which implies the existential; and another, referring to biodiversity and natural resources, which is presented as the sustainer of good living; these two points structure the content of the right and, at the same time, impose generic obligations on the State, which allows us to affirm that the EC, around the rights of nature, forms maximalist contents in demands and guarantees that could imply a leap in terms of environmental protection or a paradigm shift. (Vernaza Girard, Cutié Danelia, 2022)

The Constitution of Ecuador of 2008 framed in the new Latin American constitutionalism, legally recognized the ancestral traditions of the Andean indigenous cosmovision, which sustain, in a different way, the relationship of the human being with his environment: *sumak kawsay* or good living, which is not only about the community limited to humans, but about the community of everything living; therefore, expressly recognizes nature as a subject of rights; becoming the first country in the world to recognize them and contemplates an unprecedented regulation in the world, being the first Fundamental Charter to recognize the Rights of Nature; establishes different rights and aspects in which it involves the commitment of State institutions as responsible for promoting respect for the rights of nature or *Pacha Mama* where life is reproduced and carried out and that are aimed at Good Living for all. Textually, the rights of nature were enshrined in two articles:



"Article 71. Nature or Pacha Mama, where life reproduces and realizes, has the right to have its existence fully respected and *the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes*. Any person, community, people or nationality may demand from the public authority the observance of the rights of nature.

Article 72. Nature has Right to restoration. This restoration will be independent of the obligation of the State and natural or legal persons to compensate individuals and groups that depend on the affected natural systems." (Constitución de la República del Ecuador, 2008)

The 2008 Constitution also establishes requirements and conditions that must be met by Ecuadorian society, and in a special way, the Ecuadorian State and which is contained in Title VI DEVELOPMENT REGIME, which establishes that, for the achievement of Good Living, the rights of individuals, communities and nature must be guaranteed; This implies different lifestyles, among other aspects, to prevent the effects of climate change, which directly affect nature; hence the importance of having public policies in accordance with the sustainability of natural resources and principles of conduct for Sumak Yawsay or Good Living; expression that is still in an interpretative stage and construction of its meanings, if you want to achieve management proposals that articulate its compliance.

Giving voice to the Ecuadorian population makes it easier to make visible the most disadvantaged sectors of society, listen to their demands and describe their needs and desires, as well as observe how these are articulated to their way of life. Although Good Living is not conceived as a mere repository of political initiatives more or less structured on that title, it is because its genesis is counted on social participation. (Penalva, 2021)

That Ecuador is the first country in the world to enact the rights of Nature in its Constitution, without a doubt, instituted it as a reference, both for the constituents, and for the whole country; A country rich in natural resources, but poor because of the inability to control the destruction of that natural wealth.

The rights recognized to nature, in essence, are limited to three basic aspects: its existence, its conservation and its restoration; and, for its exercise, the limits must be established through the systematic interpretation of the Constitution of Ecuador, considering other constitutional principles and values such as good living, the *Sumak Kawsay*, coexistence in harmony with nature and human rights. (Gómez, 2016)

To comply with this constitutional mandate, it is provided that the State will apply precautionary and restriction measures for activities that may lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles; Likewise, the introduction of organisms and organic and inorganic material that may definitively alter the national genetic heritage is prohibited; To this end, it also provides that individuals, communities, peoples and nationalities shall have the right to benefit from the environment and natural wealth that allow them to live well; that environmental services will not be susceptible to appropriation; its production, provision, use and exploitation shall be regulated by the State. (Acosta, A., & Martínez, E., 2011)

The government's definition of Good Living is less far-reaching than what the indigenous movement understands as Sumak Kawsay. Buen Vivir does not succeed in its practice as an eco-social-democratic reformism, an attempt to increase social and political participation and reduce the exploitation of nature. Sumak Kawsay is, meanwhile, a fundamentally alternative proposal that - within the plurinational and intercultural discourse - seeks to "change social structures and change them in depth". (Altmann, 2016)

The Constitution of Ecuador also establishes in article 83 some of the duties and responsibilities of Ecuadorians, in environmental matters, which are: defend the territorial integrity of Ecuador and its natural resources, respect the rights of nature, preserve a healthy environment and use natural resources in a rational, sustainable and sustainable manner, conserve the cultural and natural heritage of the country, and care for and maintain public goods; and it is also recognized in article 97 that all organizations may demand compensation for damages caused by public or private entities; formulate economic, political, environmental, social and cultural proposals and demands; and other initiatives that contribute to good living; being the exclusive power and competence of the Central



State, in accordance with what is stated in article 261, protected natural areas, natural resources, energy resources; minerals, hydrocarbons, water, biodiversity and forest resources.

Good living requires that individuals, communities, peoples and nationalities effectively enjoy their rights, and exercise responsibilities within the framework of interculturality, respect for their diversities, and harmonious coexistence with nature; and concomitantly with this, the Constitution also establishes in article 276, number 4, that one of the objectives of the development regime will be to recover and conserve nature and maintain a healthy and sustainable environment that guarantees people and communities equitable, permanent and quality access to water, air and soil, and to the benefits of subsoil resources and natural heritage; determining also that it shall be the responsibility of the State to ensure that animals intended for human consumption are healthy and raised in a healthy environment; all this implies then, the responsibility of the State, to prevent and protect the population from the consumption of contaminated food or that put their health at risk or that science has uncertainty about its effects. (López Moncayo, 2016)

Article 395 of the Constitution of Ecuador recognizes the following environmental principles: 1. The State shall guarantee a sustainable model of development, environmentally balanced and respectful of cultural diversity, which conserves biodiversity and the natural regeneration capacity of ecosystems, and ensures the satisfaction of the needs of present and future generations. 2. Environmental management policies shall be applied in a transversal manner and shall be mandatory compliance by the State at all levels and by all natural or legal persons in the national territory. 3. The State shall guarantee the active and permanent participation of affected persons, communities, peoples, and nationalities in the planning, execution, and control of any activity that generates environmental impacts. 4. In case of doubt as to the scope of the legal provisions on environmental matters, they shall be applied in the sense most favourable to the protection of nature.

And something very important that the Constitution of Ecuador provides in article 396, literally, is that the State will adopt the appropriate policies and measures that avoid negative environmental impacts, when there is certainty of damage. In case of doubt about the environmental impact of any action or omission, even if there is no scientific evidence of the damage, the State will adopt effective and timely protective measures. Liability for environmental damage is objective. Any damage to the environment, in addition to the corresponding sanctions, will also imply the obligation to fully restore ecosystems and compensate affected people and communities. Each of the actors in the processes of production, distribution, marketing and use of goods or services will assume direct responsibility for preventing any environmental impact, for mitigating and repairing the damage it has caused, and for maintaining a permanent environmental control system. Legal actions to pursue and sanction environmental damage shall be imprescriptible. (Constitución de la República del Ecuador, 2008)

For the defense and protection of the rights of nature, the same means of access to justice that apply to human rights are applicable. The Constitution of Ecuador guarantees access to justice as a right, and when it refers to the defense of the rights of nature, article 71 establishes that "any person, community, people or nationality may demand from the public authority the fulfillment of the rights of nature." Therefore, if the right of people to live in a healthy and ecologically balanced environment is affected, either because of environmental impact or environmental damage, any holder of rights or the Ombudsman, can exercise legal actions and go to the judicial and administrative bodies, to obtain from them effective protection in environmental matters, including the possibility of requesting precautionary measures that allow the threat or environmental damage to cease immediately.

That is why, in environmental matters and the rights of nature, whoever considers himself affected can use the constitutional, civil, criminal or administrative jurisdiction; However, when it comes to the rights of nature, the constitutional route has greater relevance, through the jurisdictional bodies that allow a more adequate possibility with its characteristics and elements that configure it, such as the action for protection, the object of which is the direct and effective protection of the rights recognized in the Constitution. (Acosta, 2018)



The look of Good Living expands, the set of citizen actors involved in its construction; Since, the organizations of native peoples, indigenous intellectuals, along with others committed to their struggles and denunciations take center stage. (Gudynas, 2011)

The fulfillment of the rights of nature, undoubtedly depends on the institutionalization, actions of power and public policies propitious and concurrent to that purpose, that it is not about drawing attention to the need to adopt good practices to guarantee the good use, (rational, sustainable) of that thing we call nature, for the benefit of all humanity, but that there is truly awareness that we must live in harmony with nature.

METHODS

For the development of this research, the following methods were used:

Historical method, through which relevant aspects were identified around the rights of nature, the control and fulfillment of them and their consequent institutionalization, through the articulation of organizations that work on this issue.

Logical analysis, applied to the definition of fundamental concepts related to the subject, to determine its particularities.

Comparative legal analysis, applied to Ecuadorian and international legislation to determine the elements related to the fundamental rights of citizens.

As a scientific research technique, the analysis of documents that allow to determine the arguments of the studies carried out on the subject, as well as the current regulations, was used.

Qualitative technique.

Bibliographic analysis.- the concepts, information, texts, and theories related to the proposed work that contributed to an approximation and understanding of the subject, supported by written documents that facilitated the development of the discussion and the obtaining of results that evidence the existing problem regarding the protection of the rights of nature.

RESULTS

The results of the research are conceived in a central aspect; There is no doubt that the recognition of the rights to nature constitutes an unprecedented milestone worldwide; however, it is not enough to consecrate it at the constitutional level, which is primordial and urgent, but a theoretical-doctrinal construction is imperative from that perspective, as well as the formation of a culture of respect, knowledge and protection of the rights of nature in the areas, Social. The approach to this theme has focused on specific aspects of foundation or criticism of novelty, without reaching constructive stages; Hence the need to generate diverse attitudes and expectations that provide new knowledge that allows not only to analyze, but to comply with what it implies, nature as a subject of rights.

The lack of response from political or legal bodies, the lack of effectiveness of public policies for environmental management and natural resources, added to the lack of knowledge and obstacles to the adequate and effective protection of rights in court, causes the continued defense of the environment and nature through traditional forms of vindication of human rights.

Nature, being the subject of rights, is limited to those recognized by the Constitution of Ecuador itself; Since they do not have rights that are inherent to them as human beings, theirs depend on the express will of the competent authority, therefore, the clause of progressivity and non-regressivity of human rights does not apply with respect to them.

Good Living brings together all the citizen actors involved in its construction; in which organizations of indigenous peoples, indigenous intellectuals, along with other organizations committed to their struggles and denunciations have a special role; since, the formalization of the rights of Nature or Good Living in the current Constitution, should be one of the best examples of articulations between civil society and political society.

DISCUSSION

Good Living is not a simple replacement of Modernity by indigenous knowledge, because one cultural tradition cannot be privileged over another; the challenge lies in disassociating oneself from



Modernity to allow an encounter, a dialogue and a complementation between different knowledges, all of them with the same hierarchy and relevance.

For decades, the environmental movement has questioned current developmentalism, seeking to rethink the social, economic and political dimensions of development; all this, without abandoning its ecological concern; taking advantage of both the best expressions of contemporary science and the most appropriate traditional knowledge, using those that best adapt to their goals of environmental conservation and human well-being. All this requires an active civil society to protect the rights of nature.

The rights of nature, the rights to a healthy environment, are of great importance, since they establish a clear obligation for the State, regarding the areas that must be conserved. The Constitution clearly indicates that they must aim at the good living of people and the good of Nature. The Constitution of Ecuador gives special importance to environmental aspects, so much so that the section on the rights of Nature stands out, which has the right to have its existence fully respected and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes; as well as, that you have the right to a comprehensive restoration. When the rights of Nature are recognized, it is implicit that it possesses intrinsic values, the so-called own values. Nature ceases to be an object managed on the basis of human benefit or utility, and becomes a subject of rights. The position is reinforced by adding that the restoration of Nature is also one of its rights.

The environment is protected, but not because of its own values or what it represents, but because it is necessary to ensure the quality of life or health of people, their property or their usefulness; Therefore, they are rights that depart and return to the human being. This system of rights is articulated with Good Living or Sumak Kawsay. It is established that Good Living is not possible without an environment that is healthy, ecologically balanced and that guarantees sustainability; These are all mutually determined. It is established that Good Living requires that "individuals, communities, peoples and nationalities effectively enjoy their rights, and act within the framework of interculturality, respect for their diversities, and harmonious coexistence with nature" (art. 275 CRE).

CONCLUSIONS

The challenges for political society, and especially for actors in state spaces and political parties, are very great; and, they are also for civil society, in the sense of remaining actively involved in the search for alternatives to development.

It is evident that the current constitutional text is a fertile ground for the perspective of sustainable development, by postulating respect for cultural diversity and the satisfaction of the needs of present and future generations, since it is evident the need to adopt good practices to guarantee the good use, rational and sustainable of Nature, for the benefit of all humanity.

The use of natural resources must be rational, sustainable and sustainable; since, the emergence of the idea of Good Living takes advantage of alternative knowledge that comes from indigenous traditions, which are alien to beliefs such as faith in perpetual material progress.

The possibilities of eradicating poverty and improving the quality of life of indigenous and peasant populations depend on the conditions of access, management and control of their productive resources; through the reappropriation of natural resources and towards the collective management of communities' environmental goods and services.

If the rights of Nature are taken seriously, true values appear and the chains of an exclusively economic valuation are broken; Other dimensions of valuation re-emerge, such as ecological, aesthetic, religious, cultural, etc. The rights of Nature do not imply imposing a single scale of valuation, but oblige us to recognize them as multiple and diverse.

REFERENCES

- [1] Acosta, A. (2018). *Pluriverse Towards post-capitalist horizons*. Quito.
- [2] Acosta, A., & Martínez, E. (2011). *Nature with Rights*. Quito: Abya-yala.
- [3] Altmann, P. (2016). *Good Living as an integral political proposal: Dimensions of Sumak Kawsay*. Quito: mundosplurales.



- [4] Clavero, B. (2017). *Human rights and rights of Mother Earth*.
- [5] *Constitution of the Republic of Ecuador*. 2008. Quito.
- [6] Inter-American Court. (2017). *Advisory Opinion 23 17*.
- [7] Galeano, E. (2017). *Rights of nature and ecological justice in Latin American key. HORIZONS AND CONVERGENCES*, 2927-2961.
- [8] Gomez, R. (2016). *Elements for the debate and interpretation of Good Living / Sumak kawsay*.
- [9] Gudynas, E. (2011). *Quito: CITY*.
- [10] Gudynas, E. (7 of 10 of 2013). Retrieved from *Nature Rights Whatch.com*:
<https://naturerightswatch.com/33-2/>
- [11] López Moncayo, J. (2016). *Paradigms of Good Living. Good Living Magazine in Ecuador. Quito: Revista del Buen Vivir in Ecuador*.
- [12] Morales, M., & others. (2013). *Environmental Law in Ecuador. Quito-. Quito: Ecolex*.
- [13] Penalva, C. (2021). *The community of Good Living, its popular voices and its measures. Dykinson*.
- [14] Vernaza Girard, Cutié Danelia. (2022). *The rights of nature from the perspective of judges in Ecuador. IUS*.
- [15] Zaffaroni, E. R. (2011). *The pachamama and the human. Buenos Aires, Argentina: Ediciones Madres de Plaza de Mayo*.